

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

205

CWP No.15113-2018
Decided on : 21.11.2019

Shanti Devi & others

... Appellants

Versus

State of Haryana & others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr.S.S.Sangwan, Advocate, for the petitioners.

Mr.Shivendra Swaroop, AAG, Haryana, for respondents No.1 & 4.

Mr.Pritam Saini, Advocate, for respondents No.2 & 3.

G.S. Sandhawalia, J. (Oral)

Prayer in the present writ petition, filed under Articles 226/227 of the Constitution of India, is for issuance of direction to the respondents for disbursal of the enhanced compensation to the petitioners in lieu of the acquired land in terms of the order dated 12.02.2016 passed in RFA-564-2014 titled *Mahavir & others Vs. State of Haryana & another*, whereby same amount of compensation has been granted @ Rs.42,62,625/- per acre.

State has resisted the said claim on technical grounds that under Section 28-A(3) of the Land Acquisition Act, 1894, an alternative remedy is provided, keeping in view the fact that respondent No.4, vide order dated 30.01.2015 (Annexure P-3) has granted a sum of Rs.14,24,996/- per acre, as granted by the Reference Court, for the land which was acquired of Village Asoudha Tohran.

The primary grievance of the petitioners, as such, is that the matters were pending before this Court and therefore, respondent No.4 should not have taken a call on the application under Section 28-A till the

pendency of the litigation before the superior Courts. It is, now, pointed out that the judgment in **Mahavir** (supra) has been modified in CA-015702-2017 arising out of SLP(C) No.16063 of 2016 titled *Jag Mahender & another Vs. The State of Haryana & others*, decided on 21.09.2017 and the amount of compensation has, now, been reduced to Rs.32,62,500/- per acre. Relevant portion of the judgment reads as under:

“Considering the aforesaid aspect, we deem it appropriate to modify the determination made by the High Court to the extent that if we give 25% of the area from the sale deed (P3) its value comes to Rs.22,50,000/- per acre then adding 15% appreciation thereupon for three years, the amount comes to Rs.32,62,500/- per acre. Alongwith the amount of compensation awarded at the aforesaid rate the amount to carry the statutory benefits. The amount which has not been paid so far be paid within a period of three months from today. The appeals filed by the State allowed to the aforesaid extent and that by the owners also accordingly disposed of.”

Counsels for the respondents, thus, have objected to the amount on the ground that there was an alternative remedy available, as such.

The proposition of law is settled beyond an anvil of doubt that the Land Acquisition Collector should have hold his hands till the decision of the case by the superior Courts. Reliance can be placed upon the judgments of the Apex Court in '**Babua Ram and others Vs. State of U.P. And another, 1995 (2) SCC 698, 'Union of India Vs. Pardeep Kumari, 1995 (2) SCC 736, 'Union of India Vs. Hansoli Devi', 2002 (7) SCC 273.**

In similar circumstances, this Court in CWP-3805-2018 titled *Sunder Lal & others Vs. State of Haryana & others*, decided on 14.03.2019, has held as under:

“The principle has already been settled by the Apex Court time and again that 'once the matter is pending before the superior Court, respondent No.2/Land Acquisition Collector should stay its hands'. Reliance can be placed upon the judgment in '**Babua Ram and others v. State of UP and another, 1995 (2) SCC 698**' and the recent decision of the Apex Court in '**Bharatsing v. The State of Maharashtra and others, (2018) 11 SCC 92**'. Relevant portion of the same reads as under :

“17. The Section 28A application dated 31.12.1992 based on the awards in LAR Nos.123 and 129 of 1983 was decided on 25.10.2000 when the appeals therefrom were pending. The Collector ought to have kept the application pending till the appeals were decided on 23.3.2009. On principle, the High Court is correct and justified in the view taken in the impugned judgment that there cannot be successive applications under Section 28A in view of **Pradeep Kumari** (supra). But that is not the point arising for consideration here. No doubt, the second application dated 27.5.2009 for refixation in light of the appellate Court judgment is not maintainable. However, since the Collector is also at fault in deciding the application when the matter was pending in appeal, we are of the view that in the peculiar facts of the instant case, the application dated 31.12.1992 should be considered afresh. Accordingly, the appeal is disposed of as follows. The Land Acquisition Collector is directed to consider afresh the Section 28A application dated 31.12.1992 and pass orders in the light of the judgment of the High Court dated 23.3.2009 in First Appeal Nos.

569 and 570 of 1997 on the file of the High Court of Bombay, Bench at Aurangabad. For enabling the Collector to pass orders as above, the order dated 25.10.2000 is set aside. However, the amounts already paid are to be duly adjusted.”

The Apex Court in' **Narendra and others v. State of UP and others, (2017) 9 SCC 426'** has held that the land owners are entitled for the equal amount of compensation. The relevant portion reads as under :

“8. The purpose and objective behind the aforesaid provision is salutary in nature. It is kept in mind that those landowners who are agriculturist in most of the cases, and whose land is acquired for public purpose should get fair compensation. Once a particular rate of compensation is judicially determined, which becomes a fair compensation, benefit thereof is to be given even to those who could not approach the court. It is with this aim the aforesaid provision is incorporated by the legislature. Once we keep the aforesaid purpose in mind the mere fact that the compensation which was claimed by some of the villagers was at lesser rate than the compensation which is ultimately determined to be fair compensation, should not be a ground to deny such persons appropriate and fair compensation on the ground that they claimed compensation at a lesser rate. In such cases, strict rule of pleadings are not be made applicable and rendering substantial justice to the parties has to be the paramount consideration. It is to be kept in mind that in the matter of compulsory acquisition of lands by the Government, the villagers whose land gets acquired are not willing parties. It was not their voluntary act to sell off their land. They were compelled to give the land to the State for public purpose. For this purpose, the consideration which is to be paid to them is also not of their choice. On the

contrary, as per the scheme of the Act, the rate at which compensation should be paid to the persons divested of their land is determined by the Land Acquisition Collector. The Scheme further provides that his determination is subject to judicial scrutiny in the form of reference to the District Judge and appeal to the High Court, etc. In order to ensure that the landowners are given proper compensation, the Act provides for “fair compensation”. Once such a fair compensation is determined judicially, all landowners whose land was taken away by the same notification should become the beneficiary thereof. Not only it is an aspect of good governance, failing to do so would also amount to discrimination by giving different treatment to the persons though identically situated. On technical grounds, like the one adopted by the High Court in the impugned judgment, this fair treatment cannot be denied to them.

9. No doubt the judicial system that prevails is based on adversarial form of adjudication. At the same time, recognising the demerits and limitations of adversarial litigation, elements of social context adjudication are brought into the decision-making process, particularly when it comes to administering justice to the marginalised section of the society.”

Merely because there is an alternative remedy as such would not stand in the way of the petitioners, as it is settled principle that the writ Court can exercise its jurisdiction where it feels appropriate to reach out and grant the benefit of relief. It would be a futile exercise to refer the matter to the reference Court, which would be bound by the order of the Apex Court and to curtail unnecessary litigation and delay, the petitioner can be granted the same amount as the litigation qua the fixation of market value has been fixed. Accordingly, no ground is made out to send the matter to the reference

Court, the prayer of the State to that extent stands declined.

In such circumstances, the order, as such, of respondent No.2 cannot be held to be justified. Accordingly, the same is quashed. The petitioners are, accordingly, entitled for the same amount of compensation as has been awarded by the Apex Court.

Petitions stand allowed.

Photocopy of this order be placed on the files of the connected appeals.”

Resultantly, keeping in view the above, the present writ petition is allowed, by modifying the order of the Land Acquisition Collector, Jhajjar dated 30.01.2015 (Annexure P-3) and directing the State to pay the amount of compensation @ Rs.32,62,500/- per acre along with all statutory benefits, within a period of 3 months from the receipt of a certified copy of this order.

NOVEMBER 21st, 2019
SAILESH

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*